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HUMAN RIGHTS COMMITTEE
Seventy-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SWITZERLAND

1. The Committee considered the second periodic report of Switzerland (CCPR/C/CH/98/2) at its 1964th and 1965th meetings (see CCPR/C/SR.1964-1965), held on 19 October 2001, and adopted the following concluding observations at its 1977th and 1978th meetings (see CCPR/C/SR.1977-1978), held on 29 and 30 October 2001.

A. Introduction

2. The Committee welcomes the timely submission of the State Party's comprehensive second periodic report. The Committee appreciates the extensive supplementary report covering events since the submission of the primary report. (It regrets that the supplementary report was submitted too late to be made available in more than one working language.) It also appreciates the State party's detailed responses to the Committee's concluding observations on consideration of the initial report, as well as the additional information provided by the delegation in response to the Committee's question.

B. Positive aspects

3. The Committee welcomes the progress made since the consideration of the State party's initial report in advancing the protection of Covenant rights. It especially notes the adoption of the revised federal Constitution, which came into force in January 2000, which contains a bill of rights.

4. The Committee welcomes the repeal in March 1998, following its previous recommendations (see CCPR/C/79/Add.70, para. 28), of the Federal Decree on Political Speeches by Foreigners, which restricted the freedom of expression of foreigners without a permanent residence permit.

C. Principal areas of concern and recommendations

5. The Committee remains concerned that the State Party has not seen fit to withdraw its reservations to the Covenant. It notes the mandate given to the federal administration to examine the question of the removal of reservations to human rights treaties and hopes that by the time the next report is considered all reservations to the Covenant will have been withdrawn. Further, the Committee reiterates its recommendation that the State party accede to the Optional Protocol to the Covenant.

6. The Committee is concerned that the application of the State party's obligations under the Covenant in all parts of its territory may be hampered by the federal structure of the State party. It reminds the State party that under article 50 of the Covenant the provisions of the Covenant "shall extend to all parts of federal States without any limitations or exceptions".

The State party should take measures to ensure that the authorities in all cantons and communities are aware of the rights set out in the Covenant and of their duty to ensure respect for them.

7. The Committee is concerned that urgent legislation "that has no constitutional basis", permitted under article 165 of the Federal Constitution may lead to derogation from Covenant rights, without the requirements of article 4 of the Covenant being met.

The State party should ensure that its framework for urgent legislation ensures compliance with its obligations under article 4 of the Covenant.

8. The Committee is concerned that incidents of racial intolerance have increased. While commending the continuous efforts made by the Federal Commission against Racism to combat anti-Semitism, racism and xenophobia, it notes that the Commission does not have the power to initiate legal action to combat racial incitement and discrimination.

The State party should ensure rigorous enforcement of its laws against racial incitement and discrimination. It should consider broadening the mandate of the Federal Commission against Racism, or creating an independent human rights mechanism with the power to initiate legal action (articles 2 and 20 of the Covenant).

9. In relation to article 3 of the Covenant the Committee recognizes the progress made since the initial report in promoting equality of men and women and notes in particular the launching of the Plan of Action "Equality between women and men". Nevertheless, it remains concerned that women are still disadvantaged in many areas, especially in the achievement of equal remuneration for work of equal value and in appointment to senior positions, in both the public and private sectors.

The State party should implement its Plan of Action and adopt binding policies to ensure compliance with article 3 of the Covenant in all parts of its territory.

10. The Committee is concerned that legislation protecting individuals against discrimination in the private sector does not exist in all parts of the State party's territory.

The State party should ensure that legislation exists throughout its territory to protect individuals against discrimination in the private field, pursuant to articles 2 and 3 of the Covenant.

11. The Committee is deeply concerned at reported instances of police brutality towards persons being apprehended and detainees, noting that such persons are frequently aliens. It is also concerned that many cantons do not have independent mechanisms for investigation of complaints regarding violence and other forms of misconduct by the police. The possibility of resort to court action cannot serve as a substitute for such mechanisms.

The State party should ensure that independent bodies with authority to receive and investigate effectively all complaints of excessive use of force and other abuses of power by the police are established in all cantons. The powers of such bodies should be sufficient to ensure that those responsible are brought to justice or, as appropriate, are subject to disciplinary sanctions sufficient to deter future abuses and that the victims are adequately compensated (article 7 of the Covenant).

12. The Committee is concerned that many of the guarantees in articles 9 and 14 are not contained in the criminal procedure codes of some cantons and that a unified criminal procedure code has not yet been adopted. Consequently, rights under articles 9 and 14 are not always respected. The Committee is particularly concerned at persistent reports that detainees have been denied the right to contact a lawyer upon arrest or to inform a close relative of their detention.

The State party should take measures to ensure effective implementation of all rights under articles 9 and 14 of the Covenant in all parts of its territory.

13. The Committee is deeply concerned that, in the course of the deportation of aliens, there have been instances of degrading treatment and use of excessive force, resulting on some occasions in the death of the deportee.

The State party should ensure that all cases of forcible deportation are carried out in a manner which is compatible with articles 6 and 7 of the Covenant. In particular, it should ensure that restraint methods do not affect the life and physical integrity of the persons concerned.

14. While the Committee notes the delegation's explanation that incommunicado detention is not practised in Switzerland, it is concerned that the criminal procedure code in some cantons would still seem to allow such detention.

The State party should ensure that its laws throughout the country do not allow incommunicado detention in violation of articles 9 and 10 of the Covenant.

15. The Committee is concerned at the consequences of distinctions made in various pieces of legislation between citizens and non-citizens, the latter forming a considerable segment of the workforce. In particular, aliens without working papers run the risk of becoming victims of exploitation and abuse. Another vulnerable category of persons are foreign spouses of foreigners with residence permits, who are subject to deportation in the event of discontinuation of de facto cohabitation and, hence, may be forced to live in abusive relationships.

The State party should review its policies in relation to distinctions between citizens and aliens and between different categories of aliens, in particular in respect of those who do not have papers and spouses of foreigners with residence permits, in order to ensure that the rights of such persons under the Covenant are respected and ensured (articles 2, 3, 9, 12, 17 and 23).

16. The State party should widely publicize the text of its second periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee and, in particular, the present concluding observations.

17. The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations contained in paragraphs 13 and 15 of the present concluding observations. The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be submitted by 1 November 2006.